

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

FEDERAL TRADE COMMISSION, )  
Plaintiff, )  
v. ) CIVIL ACTION NO. 04-CV-11136GAO  
DIRECT MARKETING CONCEPTS, INC., et )  
al., )  
Defendants. )  
)

---

AFFIDAVIT OF LUKE GOLJAN

I, LUKE GOLJAN, under oath declare as follows:

1. I have been working with ITV Direct and Direct Marketing Concepts since October of 2002, when I began working as a videographer, subcontracted through Counter Productions.
2. I have read Scot Sarver's affidavit and I have personal knowledge relating to the taping and production of the Supreme Greens infomercial.
3. In February of 2003, I was hired to serve as a videographer for the Supreme Greens taping and was present for the entire day. At no point did I witness Donald Barrett inform Alex Guerrero to fabricate any statements. In fact, it would be incredibly foolish for anyone to make such a statement, as the cameras are running even between takes during a shoot, as is the audio recording equipment. Such a statement would surely be captured either on camera or on the soundtrack.

69

4. Scott Sarver was present solely to set up the call-in portion of the show, during which the study was not discussed at all. This portion was taped separately and was to be edited into the infomercial later.
5. In July of 2003, Counter Productions hired me on as a freelance editor to work on ITV Direct's infomercials. The first show I rough cut was the Supreme Greens show, which I did multiple rough cuts of, along with another editor, Anne Vinsel. At no point in reviewing the tapes and audio did I come across any evidence that Guerrero was being told to fabricate any statements or lie about his background or studies.
6. I continued working on the Supreme Greens infomercial in various versions and re-edits until September/October of 2003. In total, there have been as many as 9 different versions created, each slightly different. This is drastically different from the claims Mr. Sarver makes in his statement. Some edits were done for time only and removed extraneous words (such as "That's fascinating" and "tell me more"). Some versions were simply digitally compressed versions of the show that ran at a faster frame rate. Some versions had disclaimers on the bottom every five minutes, or a different disclaimer at the beginning. Though Scott Sarver may have referred to specific shows by "A" and "B," this was not how they were specified on dub requests, which simply stated the number (ex: "Supreme Greens ver. 4.0").
7. The ninth edit of Supreme Greens was the version re-shot in October 2003. Sarver claims this version was neither edited nor aired, both of which are incorrect. It was edited immediately after its taping and tested immediately. To make things easier for the media team, who was getting inundated (and legitimately confused)

with multiple version numbers, this version was referred to simply as "Dr Guerrero's Alkalizing System" and has been sent out on several occasions to stations. This version was the edited version that we believed was FTC compliant. This version was provided to media outlets and substituted for the prior versions.

8. I understand Sarver no longer had any involvement with ITV and Direct Marketing Concepts after April 19, 2004. The Guerrero infomercials had existed for months prior to his termination; his statement otherwise is untrue.
9. In January 2004, Counter Productions was terminated from ITV Direct as its primary video production service. I remained on, working directly with ITV Direct so as to avoid the billing errors and other problems they had experienced when Counter Productions was involved.
10. I understand Sarver communicated with Counter Productions after they were terminated from ITV Direct and I personally witnessed him entering their offices the day after his termination from ITV.
11. Days prior to termination, Sarver also provided multiple erroneous 800#s for dubs that actually directed callers to other call centers, one of them being a phone sex hotline. These acts demonstrated to me that Sarver was attempting to hurt DMC and ITV Direct and possibly to compete with the company after he was terminated.

#### FTC CLAIMS ABOUT INFOMERCIAL

12. After reading the FTC's statement, I reviewed the infomercial (Supreme Greens Version 4.0) for accuracy. Not only are there disclaimers both immediately before and after the infomercial stating that it is a paid advertisement, it also includes

6

disclaimers that state that "individual results may vary" and that "this product does not claim to heal or cure any illness" that appear at various points throughout the show. (see attachment A)

13. The Alkalizing System version carried a disclaimer at the beginning of the show that reads: "The following is a paid advertisement for Supreme Greens, brought to you by ITV Direct," as well as a large disclaimer stating: "The views expressed on this program are solely the opinion of our guest. Health benefits described during this program may not be experienced by all who use the described products. In some cases opinions may not be supported by scientific evidence. No representation or warranty as to any specific result is intended." This version also included disclaimers placed throughout the show that informed the viewer: "This is a paid advertisement for Supreme Greens." (see attachment B)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4<sup>th</sup> day of June, 2004 in Beverly, Massachusetts.



LUKE GOLJAN

LG